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Suppl
Reply
Brief

October 27, 2004

Board of Patent Appeals and Interferences
United States Patent and Trademark Office
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BOARD OF PATENT APPEALS
AND INTERFERENCES

Re: **Appeal Nos.:** 2005-0064 and 2003-1769
Application Serial No.: 09/014,076
Confirmation No.: 4092
Applicants: Max Fedor, et al.
Title: Method For Tracking And Dispensing
Medical Items
Docket No.: D-1056 DIV3

Sir:

Please find enclosed a Supplemental Reply Brief in response to the Office Action dated September 15, 2004 for filing in the above-referenced application.

No fee is deemed required. However, the Commissioner is authorized to charge any necessary fee associated with the filing of the Supplemental Reply Brief and any other fee due to Deposit Account 10-0637.

Very truly yours,

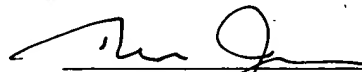


Ralph E. Jocke
Reg. No. 31,029

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appeal Nos.: **2005-0064 and 2003-1769**

In re Application of:

Max Fedor, et al.

Serial No.: **09/014,076**

Confirm. No.: **4092**

Filed: **January 27, 1998**

Title: **Method For Tracking And
Dispensing Medical Items**

Art Unit 3653

Patent Examiner

Michael E. Butler

BOARD OF PATENT APPEALS
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SUPPLEMENTAL REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

Sir:

The Appellants hereby submit a Supplemental Reply Brief pursuant to 37 C.F.R. § 41.41 concerning the above-referenced Application.

Initial Comments

The Office Action dated September 15, 2004 is acknowledged. The Office Action was labeled "Response to Remand from the Board for Examiner Queries." The Office Action does not appear to constitute a Supplemental Examiner's Answer. Thus, it is unclear whether a Supplemental Reply Brief is even required. Appellants request that the appeal be maintained.

Remarks regarding the Remand

Remarks regarding remand Issues I, II, III, and IV:

Issue I

Appellants agree with the Examiner concerning the withdrawal of rejections. "Grounds of rejection not argued in the examiner's answer are usually treated as having been dropped."

(MPEP § 1208). The Examiner's Answer already vacated the following two rejections:

The rejection of claims 48-53 pursuant to 35 U.S.C. § 102(e) as being anticipated by Halvorson.

The rejection of claims 48-53 pursuant to 35 U.S.C. § 103(a) as being unpatentable over Pearson '029.

Issue II

The Examiner acknowledges that Pearson '232 is applied to anticipate all the pending claims, except for claims 42 and 44. This is confirmed by having Pearson '232 separately applied in an anticipatory rejection against claims 38-41, 43, and 45-53.

The 35 U.S.C. § 103(a) rejection involving Pearson '232 and Meador does not include claim 44. It follows that the 35 U.S.C. § 103(a) rejection is only applicable to claim 42. Thus, the Examiner has clarified that only claim 42 is rejected pursuant to 35 U.S.C. § 103(a) over Pearson '232 in view of Meador. Appellants agree with the Examiner that the issue has been clarified.

Issue III

In a manner similar to Issue II, the Examiner has clarified that only claims 42 and 44 are rejected pursuant to 35 U.S.C. § 103(a) over Pearson '232 in view of Blechl. Appellants agree with the Examiner that the issue has been clarified.

Issue IV

Appellants agree with the Examiner that the 35 CFR § 1.131 Declaration is sufficient in establishing an earlier date.

STATUS OF CLAIMS

Claims 38-53 are pending in the Application.

Claims rejected: 38-53

Claims allowed: none

Claims confirmed: none

Claims withdrawn: none

Claims objected to: none

Claims canceled: 1-37

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The questions presented in this appeal are:

- 1). Whether Appellants' claims 38-41, 43, and 45-53 are unpatentable under 35 U.S.C. § 102(e) as being anticipated by Pearson '232.
- 2). Whether Appellants' claims 48-53 are unpatentable under 35 U.S.C. § 102(e) as being anticipated by Pearson '029.
- 3). Whether Appellants' claim 42 is unpatentable under 35 U.S.C. § 103(a) over Pearson '232 in view of Meador.
- 4). Whether Appellants' claims 42 and 44 are unpatentable under 35 U.S.C. § 103(a) over Pearson '232 in view of Blechl.
- 5). Whether Appellants' claims 48-53 are unpatentable under 35 U.S.C. § 103(a) over Halvorson.

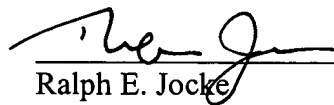
ARGUMENT

The Appeal Brief filed on March 9, 2001 and the Reply Brief filed on March 31, 2003 are herein incorporated by reference. Please refer to Appellants' previous arguments regarding all the issues of record. It is respectfully submitted that no other comments by Appellants are deemed necessary with regard to the Office Action dated September 15, 2004.

CONCLUSION

Each of Appellants' pending claims specifically recites features, relationships, and steps that are neither disclosed nor suggested in any of the applied prior art. Furthermore, the applied prior art is devoid of any teaching, suggestion, or motivation for combining features of the applied prior art so as to produce the recited invention. For these reasons it is respectfully submitted that all the pending claims are allowable.

Respectfully submitted,



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